IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

MONDAY, THE 24TH SEPTEMBER 2007 / 2ND ASWINA 1929

WP(C).No. 28198 of 2007(F)

PETITIONER:

HOTEL AMRITHA,
REPRESENTED BY MANAGING PARTNER, JOSEPH K.THOMAS,
S/O. THOMAS, AGED 50 YEARS, 17/503, MARUTHI BULDG.
IN KASABA AMSOM, DESOM,MAVOOR ROAD,KOZHIKODE TALUK
KOZHIKODE DISTRICT.

BY ADV. SRI.V.R.KESAVA KAIMAL
SRI.N.M.MADHU

RESPONDENTS:
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1. C. BALAN NAIR, S/O. P.C.GOVINDAN NAIR,
AGED 72 YEARS, VAYALPURATH HOUSE, EDAKKARA,
THALAKKULATHOOR,KOZHIKODE TALUK,KOZHIKODE DISTRICT

2. K. SREEDHARAN, AGED 71 YEARS,
S/O. ANDY, KAMPURAMEL HOUSE, MAKKADA, KAKKODI,
KOZHIKODE TALUK, KOZHIKODE DISTRICT.

3. CHANDRI HARIDAS, AGED 55 YEARS,
D/O. K.E. GOPALAN NAMBIAR, SOPANAM HOUSE,
NELLICODE AMSOM, DESOM,KOZHIKODE TALUK,
KOZHIKODE DISTRICT.

4. GEORGE JAMES, AGED 21 YEARS,
S/O. K.JAMES GEORGE, KULANGARA HOUSE,MALAPARAMBA,
KOZHIKODE TALUK, KOZHIKODE DISTRICT,REPRESENTED BY
HIS POWER OF ATTORNEY HOLDER, K.JAMES GEORGE,
AGED 69 YEARS, S/O.K.C.GEORGE,KULANGARA HOUSE,
MALAPARAMBA, KOZHIKODE DISTRICT.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 24/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.BALAKRISHNAN NAIR & T.R.RAMACHANDRAN NAIR, JJ.

Writ Petition (C) No.28198 of 2007-F

Judgment

Balakrishnan Nair, J.

The petitioner is a tenant, facing eviction proceedings in RCP No.6/05 before the Rent Controller (Principal Munsiff, Kozhikode). The petitioner denied the title of the landlords. It filed Ext.P1 IA, to adjourn the case, which was listed for trial so that the issue of denial of title could be heard. By Ext.P2, the Rent Controller dismissed the application, holding that the denial of title is made without any bona fides. The petitioner feels seriously aggrieved by the said order. So, he filed Ext.P3 appeal and also Ext.P4 stay application. Since there is some delay in filing the appeal, it has filed an IA for condonation of delay also. Since the delay was not condoned, the petitioner cannot get any stay order from the appellate court. The trial is going to begin on 25.09.2007.So, this Writ Petition is filed challenging Ext.P2 and seeking a direction to the Rent Control Court to reconsider the dispute raised by him regarding the title. Since Ext.P2 is already under challenge in an appeal, in these proceedings, we cannot consider its validity.

2. The delay in filing the appeal was occasioned by the laches of the petitioner. It cannot be permitted to take advantage of its own lapses. It has to suffer the legal consequences arising out of the delay in filing the appeal. The said consequences cannot be got over by taking recourse to Article 227 of the Constitution of India. The power under the said Article is a reserve power to prevent injustice, when the proceedings before the court below is suffering from a serious jurisdictional infirmity. We do not find that this is a case fit for interference under Article 227. Accordingly, the Writ Petition is dismissed.

K.BALAKRISHNAN NAIR,JUDGE

24.09.2007 **T.R.RAMACHANDRAN NAIR, JUDGE**

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